

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4978

March 28, 2019

R E S O L U T I O N

Resolution E-4978. Pacific Gas and Electric requests approval of the sale of Narrows Hydroelectric Project to Yuba County Water Agency Under California Public Utilities Code Section 851 and General Order 173.

PROPOSED OUTCOME:

- This resolution denies Pacific Gas and Electric’s request in Advice Letter 5406-E without prejudice and allows Pacific Gas and Electric to seek approval of the transfer of its hydroelectric plant, property, equipment, facilities, licenses, permits, companion water rights and other associated assets to Yuba County Water Agency in a formal application.

SAFETY CONSIDERATIONS:

- There are no specific safety concerns with this request.
- Rejection of this advice letter does not preclude a future request by the company and does not affect the responsibility of the utility to adhere to all commission rules, decisions, General Orders and statutes including Public Utility Code Section 451 requiring it to take actions “...as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees and the public.”

ESTIMATED COST:

- The \$3.8 million proposed loss ratemaking from the transaction can be further examined in an application. It is not clear how PG&E proposes to account for the sale of the water rights.

By Advice Letter 5406-E, Filed on October 17, 2018.

SUMMARY

This Resolution rejects without prejudice Pacific Gas and Electric's (PG&E)'s Advice Letter (AL) 5406-E requesting approval of the sale of the Narrows hydroelectric plant, water rights, property and other assets¹. The \$3.8 million estimated loss and other issues require review in a formal proceeding. Therefore, PG&E is directed to make its Public Utilities Code Section 851 transaction filing through a formal application.

BACKGROUND

Advice Letter 5406-E

On October 17th, 2018 Pacific Gas and Electric (PG&E) filed Advice Letter 5406-E requesting Commission approval under Public Utilities Code Section 851 and GO 173 to grant Yuba County Water Agency the option to purchase the Narrows 1 hydroelectric Power plant and related property, equipment, facilities, licenses, permits, water rights and other assets from PG&E. PG&E plans on utilizing the gain on sale decisions² to deal with the ratemaking *loss of \$3.8 million*. PG&E proposed to handle the 2019 rate changes in an advice letter and the 2020 rate changes in the upcoming GRC.

Transfer of Assets

The Commission has established methods of reviewing and handling the transfer of utility assets. California Public Utilities Code Section 851 (Section 851) addresses the selling, leasing, disposition, and encumbrances of property. These matters were historically dealt with in formal applications. However, in 2005, the Commission initiated a pilot program³ that provided for an expedited process for certain qualifying transactions. Subsequently, General Order (GO) 173 articulates the requirements of processing transfers below a \$5 million threshold through the advice letter process. Significantly, Rule 3.k of GO 173 states that one of the requirements for AL processing of a transfer of assets is that ““The transaction does not warrant a more comprehensive review that would be provided through a formal Section 851 application.”

Proposals that meet the GO 173 requirements may be handled through an advice letter (AL) and may be resolved through a resolution. However, any of the following could undermine the fast track of an advice letter: protests, information that would push the

¹ See Appendix E of AL 5406-E, the Notice of Exemption from Yuba County Water Agency to the Office of Planning and Research in Sacramento, CA

² D.06-05-041; D.06-12-043

³ Resolution ALJ-186, and amended and extended with ALJ-202, 244, and 272

transaction over the \$5 million threshold, and other concerns that warrant a more comprehensive review.

When the transaction is reviewed, the primary standard used by the Commission is whether the transfer will serve the public interest. Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.

California Environmental Quality Act (CEQA)

As discussed in GO 173 Rule 3.a, the transfers eligible for AL treatment cannot require environmental review by the Commission as a lead agency under the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq. Because this is a property transfer that does not alter the existing uses of the property, CEQA review is not required.

Gain on Sale

The Commission has established a formal mechanism for allocating the proceeds from sales when there is a gain or loss. Specifically, Commission Decision (D.)06-05-041 sets out guidelines on sharing gains and losses between ratepayers and shareholders. The allocation scheme for proceeds or losses is designed for both depreciable assets and non-depreciable land.

In D.06-05-041, the Commission requires depreciable assets to allocate gains and losses 100% to the ratepayers. Because most of the proposed transaction involves depreciable plant, 98% of the losses are allocated to the ratepayers. It is not clear how the water rights have been incorporated into PG&E's calculations and allocation of losses.

NOTICE

Notice of AL 5406-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

PG&E's Advice Letter 5406-E was timely protested by The Utility Reform Network (TURN) on November 6, 2018.

PG&E responded to the protest of TURN on November 14, 2018.

TURN's protest of Advice Letter 5406-E focused on PG&E's request to implement 2019 rate changes through an advice letter process. TURN proposed that both 2019 and 2020 rate changes be handled in PG&E's then-upcoming General Rate Case (GRC).

PG&E Response: PG&E agrees to handle 2019 rate changes in the upcoming GRC.

Although TURN's protest was adequately addressed, Energy Division staff endeavored to carefully review the workpapers and support for the transfer. Following data requests by Energy Division staff and review of PG&E's work papers, staff identified the following questions and concerns:

1. Will the transaction still fall below the \$5 million threshold when the valuation of the water rights is included in the analysis and accounting?
2. Has PG&E proposed the proper "loss" figure or could the accounting losses be different when the accounting of the water rights is included?
3. Has there been consistent assumptions for hydroelectric power sales/retirements across proceedings (i.e. RPS and IRP)? How does PG&E propose to handle this concern if changes need to be made?
4. What is the significance of the Narrows 1 plant being listed in the Hazardous Substance mechanism as explained in PG&E AL 5125-E?
5. Does the agreement adequately transfer PG&E's long-term liabilities? What are the risks associated with the retained liabilities of the plant?
6. Are the requirements of the conservation easement addressed properly in the agreement?
7. Are there other parties, besides the GO 96-B service list, who should receive the information?
8. Are there public access concerns with the proposed arrangement that are not in accordance with D.03-12-035?

DISCUSSION

For the Commission to approve this advice letter, PG&E must demonstrate that the transfer of the Narrows hydro plant and its appurtenances meet the following eleven GO 173 Rule 3 criteria:

1. The activity proposed in the transaction will not require environmental review by the Commission as a Lead Agency under the California Environmental Quality Act (CEQA).
2. The transaction will not have an adverse effect on the public interest or on the ability of the utility to provide safe and reliable service to customers at reasonable rates.

3. Any financial proceeds from the transaction will be distributed during the next GRC or applicable proceeding and uses the proper distribution formulas.
4. If the transaction results in a fee interest transfer of real property, the property does not have a fair market value in excess of \$5 million.
5. If the transaction results in a sale of a building or buildings (without an accompanying fee interest transfer of the underlying land), the building(s) does not have a fair market value in excess of \$5 million.
6. If the transaction is for the sale of depreciable assets (other than a building or buildings), the assets do not have a fair market value in excess of \$5 million.
7. If the transfer is a lease or a lease-equivalent, the total net present value of the lease payments, including any purchase option, does not have a fair market value in excess of \$5 million, and the term of the lease will not exceed 25 years.
8. If the transaction conveys an easement, right-of-way, or other less than fee interest in real property, the fair market value of the easement, right-of-way, or other interest in the property does not exceed \$5 million.
9. The transaction will not materially impact the ratebase of the utility.
10. If the transaction is a transfer or change in ownership of facilities currently used in regulated utility operations, the transaction will not result in a significant physical or operational change in the facility.
11. The transaction does not warrant a more comprehensive review that would be provided through a formal Section 851 application.

Moreover, GO 96-B, Section 5.3 states:

Whenever the reviewing Industry Division determines that the relief requested or the issues raised by an advice letter require an evidentiary hearing, or otherwise require review in a formal proceeding, the Industry Division will reject the advice letter without prejudice.

Finally, in D.16-10-026 , where the Commission addressed the ratemaking losses of a hydroelectric plant in a formal application⁴, we addressed how the unique burdens of the “loss on the sale” of a hydroelectric plant (and appurtenances) would be properly dealt with and how the application process allowed for a more thorough review of the transaction. Interested parties need to review the accounting and liability concerns in the proposed sale agreement and provide the Commission with their recommendations before an informed decision can be made.

⁴ A.15-04-003

We find that AL 5406-E does not contain sufficient information to determine whether all of the relevant GO 173 rule 3 requirements have been met and whether or not the terms of the transfer are reasonable. For one example, per requirement 8 about a transaction conveying other interests in property that does not exceed \$5 million, it is not clear how or if the water rights are valued in this transfer. Other concerns include: addressing the long-term liabilities that may remain with PG&E and conservancy compliance issues after a transfer. Energy Division sought to obtain additional detail through data requests, but could not assess the reasonableness of the transaction in this limited process. PG&E's responses raised further questions regarding the proposed ratemaking "losses" and whether or how the transaction maintains compliance with prior Commission decisions.

Therefore, utilizing Rule 7(a)(3) b of GO 173 and GO 96B section 5.3, the Commission will take a more comprehensive review of asset transfers in the application process. Circumstances warrant such a review. PG&E's recommendation to approve this transfer in an advice letter is denied. We deny PG&E's request in this advice letter without prejudice and direct PG&E to file a formal application, if it wishes to pursue cost recovery for its sale of the Narrows 1 hydroelectric power plant, land, equipment, facilities, licenses, permits, water rights and other assets.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review.

The 30-day review and 20-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, the draft resolution was mailed to parties for comments on February 22, 2019,. The Commission received comments on the draft resolution from PG&E on March 18, 2019.

Although PG&E's comments on March 18, 2019 attempted to address the concerns regarding the water rights, long term-liabilities, public access and the conservation easement, a formal hearing of these issues would prove invaluable to the Commission. This is particularly true since PG&E has previously suggested to Energy Division staff that there will be numerous sales of hydro assets.

FINDINGS

1. PG&E's request to sell its Narrows plant, land, equipment, facilities, licenses, permits, water rights and other assets using the GO 173 (Advice Letter) process should be denied without prejudice.

2. GO 173 sets forth the eleven criteria for utilizing an advice letter for Public Utilities Code Section 851 transactions including that the transaction involves property with a fair market value not in excess of \$5 million and the transaction does not warrant a more comprehensive review through a formal application.
3. AL 5406-E does not include water rights in the net present value analysis.
4. In a data request response to Energy Division dated November 29, 2018, PG&E noted that it will retain certain liabilities.
5. GO 96-B requires the Industry Division to reject an advice letter without prejudice when it determines that issues raised by an advice letter require an evidentiary hearing, or otherwise require review in a formal proceeding.
6. PG&E's request raises issues that warrant examination through a formal proceeding.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas & Electric's request for approval under California Public Utilities Code Section 851 (Section 851) and General Order (GO) 173 for the sale of the Narrows Hydroelectric Project and associated real property (Project) to Yuba County Water Agency (YCWA), and of PG&E's proposed rate treatment for the recovery of the remaining book value of the Project in Advice Letter 5406-E is denied without prejudice.
2. Pacific Gas & Electric is directed to make its request for recovery of this expense by formal application. If PG&E files a formal application, as directed, it should address the concerns raised in this resolution.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on March 28, 2019; the following Commissioners voting favorably thereon:

/s/ALICE STEBBINS
ALICE STEBBINS
Executive Director

MICHAEL PICKER
President
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA

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Pacific Gas & Electric AL 5406-E/LLK

March 28, 2018

Commissioners